

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JAMES LEE MACK

PETITIONER

v.

CIVIL ACTION NO. 3:14cv814-DPJ-FKB

RICK MCCARTY, Interim Commissioner of MDOC

RESPONDENT

ORDER

This habeas corpus petition is before the Court on the Report and Recommendation [18] of Magistrate Judge F. Keith Ball. In his Report, Judge Ball recommends that the Court stay this case so that Petitioner James Lee Mack can exhaust his state-court remedies. Neither party has filed objections to the Report.

The Court agrees that Mack's situation is one where a stay is appropriate, and a stay of this action is accordingly entered. However, the Court finds that in order to satisfy "AEDPA's goal of finality," *Rhines v. Weber*, 544 U.S. 269, 278 (2005), Mack should be required to file his second post-conviction relief application in the Mississippi Supreme Court within thirty (30) days of this Order. Moreover, Mack should file a motion to dissolve this stay within thirty (30) days of the final resolution of his habeas claims by the Mississippi state courts. *See Rhines*, 544 U.S. at 278 ("[District courts] should explicitly condition the stay on the prisoner's pursuing state court remedies within a brief interval, normally 30 days, after the stay is entered and returning to federal court within a similarly brief interval, normally 30 days after state court exhaustion is completed." (alteration in original) (internal quotation marks omitted)). Failure to comply with these deadlines will result in the dismissal of this action, which will likely foreclose federal habeas relief.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [18] of Magistrate Judge F. Keith Ball, as modified, is hereby adopted as the opinion of this Court.

IT IS FURTHER ORDERED that Respondent Rick McCarty's Motion to Dismiss for Failure to Exhaust [11] is denied.

IT IS FURTHER ORDERED that this case is stayed pending Mack's exhaustion of his state-court remedies. Mack is hereby required to file his second post-conviction relief application in the Mississippi Supreme Court within thirty (30) days of this Order. Moreover, Mack must file a motion to dissolve this stay within thirty (30) days of the final resolution of his habeas claims by the Mississippi state courts.

SO ORDERED AND ADJUDGED this the 24th day of June, 2015.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE